second respondent, she was not sure if the appellant was there, and later resiled in cross-examination by stating that she could not remember whether she told the respondents this. The appellant in evidence denied that he was ever told this. In any event, even assuming that there had been any such arrangement it would be tantamount to an agreement to contract out of the provisions of the Control of Rent Act, 1966 which would be unenforceable.

The only point taken by counsel for the respondents at the hearing of this appeal was that the learned Magistrate was wrong in holding that the tenancy between the respondents and the tenant (PW1) was a contractual tenancy and that in fact it was a statutory tenancy. He agreed that this matter was never raised or mooted at all in the Magistrate's Court except in the reference in paragraph 3 of the Statement of Claim that the tenant of the ground floor of the premises was a statutory tenant, but argued before me that as such the tenant had no right to sub-let a portion of the premises occupied by her to the appellant. I find this contention wholly devoid of merit as it is absolutely clear that there is no longer any such entity as a statutory tenant, and any protection afforded to a statutory tenant under the precursor to the Control of Rent Act, 1966 is not recognised, perpetuated or preserved by the current Act. A tenant is only protected to the extent afforded by the provisions of section 16(1) of the Control of Rent Act, 1966 after the determination of his contractual tenancy. Any status therefore that the tenant had prior to January 1, 1967, when the 1966 Act came into force, would therefore be wholly immaterial and irrelevant. This indeed was the basis of the decision in the *United India Fire* case, *supra*.

In the circumstances of the misdirection of the learned Magistrate in the application of the *United India Fire* case, *supra*, and the substantial evidence adduced that the appellant was in fact a lawful subtenant of the tenant (PW1), a fact conceded by counsel for the respondents, I allowed the appeal, set aside the judgment of the learned Magistrate and dismissed the respondents' claim and ordered them to pay the costs of the appeal.

Appeal allowed.

Solicitors: *Chin Swee Onn; Thevin, Chandran & Siva.*

KARAM SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah F.J.) August 8, 1974]
[Alor Star — Kedah Criminal Appeal No. 20 of 1974]

Contempt of Court — Summary committal — Advocates & Solicitors Ordinance, 1947, s. 27.

Legal Profession — Control of practitioners — Advocates & Solicitors Ordinance, 1947, s. 27.

This was an appeal by an advocate and solicitor against summary conviction and sentence of 2 weeks' imprisonment. The facts disclosed in the record were that there was a heated argument between the magistrate and the appellant who was appearing on behalf of a defendant in a case concerning impersonation. The learned magistrate adjourned into chambers for 15 minutes and after considering the matter returned to the Bench and decided to deal with the appellant summarily.

Held: (1) a magistrate's summary power to proceed of his own motion must never be invoked unless the ends of justice really required such drastic means. The magistrate should not be both the prosecutor and the judge;

(2) in this case the learned magistrate should have adjourned the matter and reported it to the local Bar Committee.

CRIMINAL APPEAL.

Karpal Singh for the appellant.

Yap Cheng Boon (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah F.J. (delivering oral judgment): This is an appeal by an advocate and solicitor against summary conviction and sentence of two weeks' imprisonment.

The facts so far disclosed in the record are that there was a heated argument between the magistrate and the learned counsel who was appearing on behalf of a defendant in a case concerning impersonation under section 170 of the Penal Code.

The learned magistrate adjourned into chambers for 15 minutes and after considering the matter returned to the Bench and decided to deal with the appellant summarily. The question here is whether the facts are sufficient to warrant summary committal for contempt.

Insulting behaviour by counsel, however reprehensible, may or may not be contempt depending on the surrounding circumstances. But, in my view, a magistrate's summary power to proceed of his own motion must never be invoked unless the ends of justice really required such drastic means. No doubt it appeared to be rough justice, it is contrary to natural justice and can only be justified if nothing else would do. Therefore this power must be exercised with scrupulous care and only when the case is clear beyond reasonable doubt. In my view, it is only in urgent cases a magistrate should take on himself to move. He should, in my view, leave it to the local Bar Committee to move in accordance with section 27 of the Advocates & Solicitors Ordinance, 1947. The magistrate should not appear to be both prosecutor and judge — a role which does not become him well.

In my opinion, it was not a case for summary punishment because it was not sufficiently urgent or imperative. He would have done well if he had adjourned the case and reported the matter to the local Bar Committee. The power which a magistrate possesses is both salutary and dangerous. The present appeal gives an opportunity to make clear that it should be used reluctantly but fearlessly when and only when it is necessary to prevent justice from being obstructed or undermined. That is not because judges, witnesses and counsel who are officers of the court, take themselves seriously, but because justice, whose servants we all are, must be taken seriously in a civilized society if the rule of law is to be maintained. Therefore in this case the learned magistrate should have adjourned the matter and reported it to the local Bar Committee, which I propose to do now.

However, I would set aside the conviction and sentence.

Conviction and sentence set aside.

Solicitors: *Karpal Singh, Wong & Co.*